XI-[illegible]

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(1)

Misc. Appeal No. 131/2006

APPELLANT 1 The New India Assurance Company Limited, through Divisional Manager, the New India Assurance Company Limited, Second Floor, Rama Trade Centre, Bus Stand Road, Bilaspur (C.G.)
Insurer

Versus

RESPONDENTS 1. Sekh Nazir, S/o. Shekh Basher Mohamad, aged about 40 years, R/o. village Mangala, Police Station Civil Lines, Tehsil and District, Bilaspur (C.G.)
Owner

Driver 2. Mirza Ramjan Beag Alias Shaffik, S/o. Mirza Shekandar Beag, aged about 54 years, R/o. Naya Para, Phool Chowk, Police Station- Goal Bazaar, Tehsil & Distt. Raipur (C.G.)

Claimants 3. Balaram Kesharwani, S/o. Late Shri Raghuveer Prasad Keharwani, aged about 40 years

4. Smt. Seema Kesharwani, W/o. Shri Balaram Kesharwani, aged about 34 years

Both respondent No. 3 and 4, R/o. Behind Janpat Primary School, Mangala, village & Post Mangala, Police Station Civil Lines, Tehsil & Distt. Bilaspur (C.G.)

DB: HON'BLE SHRI JUSTICE DHIRENDRA MISHRA,J

3-5-2007

Shri Saurabh Sharma, Advocate for the appellant.

Shri Ravindra Agrawal, Advocate for respondent No. 3 and 4.

Heard.

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक MA(C)No.131/2006 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

This insurance appeal under Section 173 of the Motor Vehicle Act, 1988 is directed against the award dated 10-8-2006 passed by the learned 1st Additional Motor Accident Claims Tribunal, Bilaspur whereby the learned Tribunal has awarded a sum of Rs. 2,29,500/- to respondents No. 3 and 4, who are parents of deceased Swapnil Kesharwani who died on 27-1-2006 in a motor vehicle bearing registration No. M.P. 63B/9249 owned by respondent No. 1 and driven by respondent no. 2.

The only ground raised by the learned counsel for the appellant is that the application was filed under Section 163(A) of the Motor Vehicles Act, 1988 and Tribunal assessed notional income Rs. 15,000/- per month of the deceased who was 13 years old and applied multiplier of 15, and passed the award without deducting 1/3rd amount from his income which he would have otherwise spent towards his own expenses had he been alive.

On the other hand, learned counsel for the claimants submitted that the amount awarded is based on the judgment of the Apex Court in **Manju Devi and another-v- Musafir Paswan and others** (2005 ACJ 99 SC) where in identical case, for the death of 13 years old boy, by applying multiplier of 15 without deducting any amount from his income towards personal expenses, the amount has been assessed.

I have heard the learned counsel for the parties. I have perused the record as also the impugned award.

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक M.A.C.) No. 131/2006 **सन्** 200

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

It is true that the application has been filed under Section 163(A) of the Motor Vehicles Act, 1988 by the claimants, however it is not a case where the deceased himself was driving the vehicle or was responsible in any manner for his death. Therefore, simply because the application has been filed under Section 163(A) of the Motor Vehicles Act, 1988, it cannot be argued that it was incumbent upon the Tribunal to adhere to Schedule II of Section 163(A) of the Act. The impugned award is based on the judgment of **Manju Devi** (supra), even other wise, looking to the certificates of the deceased adduced in evidence before the Tribunal, it is observed that the deceased was student of Class 6 and was a promising student who secured first class marks throughout. Thus considering the overall circumstances and considering that the impugned award is based on the binding judgment of the Hon'ble Apex Court, no interference is called for in the impugned award.

The appeal being devoid of substance is liable to be and is dismissed.

Sd/-
Dhirendra Mishra
Judge

P/-

(पीछे देखिये)